

PUBLIC UTILITIES
BOARD OF PUBLIC UTILITIES

Energy Emergency

Proposed Amendments: N.J.A.C. 14:29

Authorized By: Board of Public Utilities, Jeanne M. Fox,
President, and Frederick F. Butler, Carol J.
Murphy, Connie O. Hughes and Jack Alter,
Commissioners.

Authority: N.J.S.A. 52:27F-16 through 18, and 21 and 24.

Calendar Reference: See Summary below for explanation of exception
to calendar requirement.

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Proposal Number: PRN 2003-

Submit comments by June 6, 2003 to:

New Jersey Board of Public Utilities
Kristi Izzo, Secretary
ATTN: BPU Docket Number: EX 03010041
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Public Utilities (Board) is proposing amendments to its energy emergency rules, N.J.A.C. 14:29. The rules were originally promulgated in response to energy shortages in 1977, and were last readopted in 2001. With the impending threat of a possible war in the Middle East, the Board has reviewed the rules and identified updates and revisions necessary to ensure that New Jersey is prepared for a possible energy emergency.

When there is a serious shortage of one or more types of energy, the Governor is authorized under N.J.S.A. 52:27F-18 to declare an energy emergency, and to take steps necessary to address the emergency. The existing rules at N.J.A.C. 14:29 set forth the measures to be used by the Board during an energy emergency to encourage energy

conservation, restrict energy use, and distribute available energy to best ensure the safety and welfare of New Jersey citizens. In addition, a few provisions enable the Board to act prior to a declaration of energy emergency, by imposing requirements for reporting, public information campaigns and emergency planning.

The three main foci of the proposal are an increase of the amount of the required petroleum set aside, a narrowing of exemptions from end-use energy reduction measures and odd/even motor fuel restrictions, and the clarification and simplification of the rule language where possible. These are discussed in detail below in the section-by-section description of the proposed amendments.

As the Board has provided a 60-day comment period on this proposed readoption, the proposed readoption notice is exempted from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

A section-by-section description of the proposed amendments follows:

SUBCHAPTER 1 GENERAL PROVISIONS

14:29-1.1 Scope

N.J.A.C. 14:29-1.1 addresses the timing of the implementation of this chapter. Most of the chapter does not come into play until the Governor has declared a state of energy emergency. However, amendments are proposed to clarify that some provisions (for energy planning, reporting, and public information programs) may be implemented prior to such a declaration. In addition, the section is separated into three subsections and rephrased, in order to make it easier to understand without changing its substantive meaning. Finally, the basis on which the Board may make the finding required for an emergency declaration is amended to more closely follow the statutory language at N.J.S.A. 52:27F-17.

14:29-1.2 Definitions

Definitions for "alternate fuel capabilities," "ambulatory handicap," "covered product," "heat recovery system," "operating reserve," "plant protection gas," "process gas," "spinning reserve," "supplier of motor fuel," "wholesale purchaser-consumer," and "wholesale purchaser-reseller" are proposed for deletion because they are no longer used in the rules.

In the definition of "boiler fuel," petroleum products are added as a type of boiler fuel.

New definitions are proposed for "BTUH" or British thermal units per hour, and "Mcf" or thousand cubic feet per day. Both terms are used in measuring the volume of natural gas.

Minor clarifications that do not affect substantive meaning are proposed to the definitions of "authorized emergency vehicles," "commercial vehicle," "electric utility," "end-user," "interruptible," "motor fuel," "school bus," and "truck stop."

A new definition is proposed for "omnibus," to be more consistent with the rules of the New Jersey Division of Motor Vehicles.

A new definition is proposed for "President of the Board," for use in provisions at N.J.A.C. 14:29-1.5, which authorize the President of the Board to act on behalf of the Board in an energy emergency, as discussed above in this Summary.

A new definition is proposed for "regulated petroleum product." This term replaces the term "covered product," which is used in the existing rules. The new definition seeks to standardize the petroleum products regulated by the rule and to make them consistent with the products reported in Form EIA 782C, which identifies to the U.S. Department of Energy those products sold in New Jersey by prime suppliers. The new definition will add jet fuel, which is not included in the existing definition; and number 2 fuel oil, which is referred to as "distillate" in the existing rules. The proposed amendments will narrow the class of distillate fuels included in the definition to number 1 distillate fuel, from all distillate fuel, in order to be consistent with the fuels reported on form 782C. Finally, the term "gasoline" is changed to the broader term "motor fuel," in order to account for the fact that gasoline is now produced in many forms and grades, which are likely to change in the future in response to environmental and market considerations.

A new definition is proposed for "truck," for use in provisions governing truck stops at N.J.A.C. 14:29-6.7.

14:29-1.3 Exemptions

N.J.A.C. 14:29-1.3 provides for exemptions to the rules, to be issued by the Division of Energy within the Board of Public Utilities. The section is proposed to be completely reorganized for clarity, and modified somewhat. Under the existing provisions, an exemption shall be granted if "compliance places an unreasonable burden" on a person. The new provisions replace this with more specific standards, which include two bases on which the Board may issue an exemption – extraordinary hardship, and public welfare. In addition, the application requirements for an exemption are expanded and clarified.

14:29-1.4 Modification of this chapter during emergency

Minor amendments are proposed to N.J.A.C. 14:29-1.4, which authorizes the Board to modify the measures in these rules if necessary. The proposed amendments specify in more detail the basis on which such modification would be permissible.

14:29-1.5 Delegation to Board President

A new section is proposed to authorize the Board President to act on behalf of the Board in certain emergency situations where a quorum cannot be convened. In cases of emergency, quick decisions must often be made, and it may be difficult to convene a quorum of the Board in order to obtain a decision on an urgent matter. Furthermore, it is increasingly possible that energy shortages could come about suddenly as a result of terrorist attacks on generation sources or distribution lines, making the capability for quick action even more crucial than before. These proposed amendments will address these problems by providing the President of the Board with the authority to act during an energy emergency.

14:29-1.6 Website

A new section is proposed to alert the public to the website maintained by the Board at www.bpu.state.nj.us, and to direct people to the website for information during an energy emergency.

SUBCHAPTER 2. END-USE ENERGY REDUCTION

14:29-2.1 Scope

Minor clarifying changes are proposed to this section, which specifies that the section applies to energy end-users and energy sellers. The subchapter has always applied to energy sellers (see existing N.J.A.C. 14:29-2.2), but the language of N.J.A.C. 14:29-2.1 has not reflected this. The proposed changes will correct this.

14:29-2.2 Public appeal

Minor clarifying changes are proposed to this section, which authorizes the Board to make or require public appeals for energy conservation. The proposal also adds suppliers of regulated petroleum products to the list of persons that the Board may call upon to make a public appeal for energy conservation.

14:29-2.3 Energy reduction measures

Clarifying changes and recodifications are proposed to N.J.A.C. 14:29-2.3, which sets forth energy reduction measures that may be required of energy end-users in the event of an energy emergency. In addition, a new provision is proposed at (b), clarifying that the measures are not listed in priority order, and may be selected from as needed to address the conditions in effect at a particular time. A prohibition on using threshold heaters is proposed to be deleted from N.J.A.C. 14:29-2.3(c)4. Finally, restrictions on sports, entertainment and recreational activities at N.J.A.C. 14:29-2.3(c)9 are proposed to be applied to professional events held at any time of the day, as directed by the Board, in

order to allow the Board to more effectively target activities that are likely to result in excessive uses of energy.

14:29-2.4 Hour limitations

Minor clarifying changes that do not affect meaning are proposed to N.J.A.C. 14:29-2.4, which authorizes restrictions on the hours of operation of industrial and commercial facilities.

14:29-2.5 Exemptions from end-use energy reduction measures

Amendments are proposed to N.J.A.C. 14:29-2.5, which exempts certain persons and facilities from the end-use energy reduction measures. The amendments substantially reduce the list of exempted facilities. The amended provision would exempt only hospital and medical care facilities, and persons who depend on life support. All other facilities would have to apply for an exemption on the basis of extraordinary hardship or public welfare under N.J.A.C. 14:29-1.3. This proposed scheme will ensure a more equitable distribution of the burden of energy conservation during an energy emergency, while allowing flexibility in cases of hardship.

SUBCHAPTER 3. NATURAL GAS

14:29-3.1 Scope, interruptible customers

Minor clarifying amendments that do not affect meaning are proposed to this section, which specifies the utilities to which the subchapter applies. In addition, proposed new (b) prohibits a natural gas utility from reducing or discontinuing service to interruptible customers for economic reasons, if this would cause the customer to switch to a petroleum fuel, unless there is a shortage of both natural gas and petroleum. This is intended to prevent a situation in which fuel switching occurs and exacerbates shortages in an energy product by adding additional consumers to the demand for the depleted fuel.

14:29-3.2 Priority plan for mandatory curtailment

N.J.A.C. 14:29-3.2 provides for mandatory reductions and suspensions of certain types of natural gas services to commercial and industrial customers. The provision sets forth a list, in priority order, of steps that can be taken in an energy emergency. The steps progress from reductions of gas service, through suspension of various types of gas service, to complete suspension of all gas service to industrial and commercial customers.

Amendments are proposed to clarify the situations in which the measures may be implemented, and to make the section easier to understand. In addition, amendments to

the priority list would slightly change the priority order for suspension of industrial natural gas service when the natural gas is used for plant protection, process or feedstock. Under the existing rules, the suspension of plant protection, process and feedstock gas is not required until after other types of gas service have been suspended. However, under the proposed amendments, process and feedstock gas would have to be suspended at the same time as most other industrial gas service is suspended. In addition, amendments are proposed to clarify that gas used for plant protection shall not be used to heat buildings to more than 40° Fahrenheit.

14:29-3.3 Inter-gas utility allocations

Minor clarifying changes that do not affect meaning are proposed to N.J.A.C. 14:29-3.3, which authorizes the Board to order movement of natural gas from one utility to another if necessary to preserve residential service.

14:29-3.4 Residential curtailment

N.J.A.C. 14:29-3.4 authorizes natural gas suppliers to reduce or suspend residential gas service with approval from the Board, or without such approval in urgent cases. Minor clarifying amendments that do not affect meaning are proposed. In addition, a provision is added requiring a utility that reduces or discontinues residential service without prior approval to notify the Board within four hours after the reduction or discontinuance. This time frame is intended to allow the utilities to act quickly to minimize the detrimental impacts of emergencies, while ensuring prompt communication with the Board. Finally, a new provision is proposed to require that the utility notify customers at least two hours prior to the reduction or elimination of service, if possible.

SUBCHAPTER 4. ELECTRIC

14:29-4.1 Scope, load interruption plan

Minor clarifying changes are proposed to N.J.A.C. 14:29-4.1, which specifies the utilities to which the subchapter applies. A provision requiring electric utilities to annually file a load interruption plan is proposed to be relocated here from N.J.A.C. 14:29-4.2(a)2 for clarity.

14:29-4.2 Programs to reduce energy consumption

Minor clarifying changes that do not affect meaning are proposed to N.J.A.C. 14:29-4.2, which authorizes electric utilities to implement load interruptions and other departures from normal operations if necessary. Existing N.J.A.C. 14:29-4.3 is recodified as N.J.A.C. 14:29-4.2(b), with minor clarifying changes. Finally, a provision is proposed at N.J.A.C. 14:29-4.2(c) clarifying that these load interruptions and departures from normal operations may also be required by the Board.

SUBCHAPTER 5. PETROLEUM PRODUCTS

14:29-5.1 Required set aside of regulated petroleum products

Existing N.J.A.C. 14:29-5.1 is proposed to be recodified at N.J.A.C. 14:29-5.2. Proposed new N.J.A.C. 14:29-5.1 describes the "set aside" that certain suppliers of regulated petroleum products are required to keep for emergency purposes during an energy emergency. This set aside is referred to in existing N.J.A.C. 14:29-5.1. The proposed new provision explains the set aside requirement in greater detail than the existing rules, and also makes some substantive changes from the existing provision.

First, the proposed new section specifies that the set aside shall be calculated based not on a percentage of available supplies but on a percentage of the amount of the regulated petroleum product sold by that supplier in the same month of the previous year. This provides a clearer and more verifiable method of calculating the required amount of the set aside. Second, the proposed new section increases the amount that must be set aside from three percent of the amount sold in the previous year to five percent. This increase is necessary to ensure that the State will have the resources necessary to respond adequately during an energy emergency. Should the amount of the set aside prove to be greater than necessary, the Board can reduce the amount required on a case-by-case or month-by-month basis, or can adjust the percentage downward in accordance with N.J.A.C. 14:29-5.1(e).

A proposed new provision requires each prime supplier to notify the Board each month of the amount of its set aside, and allows a prime supplier to release any portion of the set aside that has not been used by the 27th of the month. Finally, a new provision clarifies that the amount of the set aside may be modified if necessary, upon two days notice to prime suppliers.

14:29-5.2 Redirection of petroleum set aside

Existing N.J.A.C. 14:29-5.1 is recodified at proposed N.J.A.C. 14:29-5.2, and renamed to more accurately reflect its contents. In addition, minor clarifying changes are proposed, and provisions describing the set aside are deleted, since this is covered at proposed new N.J.A.C. 14:29-5.1.

14:29-5.3 Prime suppliers – reporting, non-discrimination

N.J.A.C. 14:29-5.2, which requires designation by prime suppliers of a contact person for energy emergency purposes and daily reporting, is proposed to be recodified at N.J.A.C. 14:29-5.3, and amended. Proposed amendments provide additional detail regarding the content and timing of required information submittals. Additional reporting requirements

found in the existing rules at N.J.A.C. 14:29-7 are proposed to be relocated here in order to consolidate the reporting requirements for prime suppliers in one section. Finally, new provisions are proposed, prohibiting discrimination by prime suppliers against non wholly owned affiliates, and requiring approval of any changes in distribution. These provisions are necessary to prevent the possibility that some persons might take advantage of a petroleum shortage to better their economic position in ways that will exacerbate the shortage or disrupt petroleum distribution systems.

14:29-5.3 Interruptible dual-fuel (natural gas and petroleum) customers

Proposed new N.J.A.C. 14:29-5.3 includes amendments also found at N.J.A.C. 14:29-3.1, which prohibit a natural gas utility from reducing or discontinuing service to interruptible customers for economic reasons, if this would cause the customer to switch to a petroleum fuel, unless there is a shortage of both natural gas and petroleum. This is intended to prevent a situation in which fuel switching occurs and exacerbates shortages in an energy product by adding additional consumers to the demand for the depleted fuel.

SUBCHAPTER 6. REGULATION AND CONTROL OF SALE OF MOTOR FUEL

14:29-6.1 Scope

Minor clarifying changes that do not affect meaning are proposed to N.J.A.C. 14:29-6.1, which authorizes restrictions on the sale of motor fuel.

14:29-6.2 Days of access to retail dealers – odd/even measure

N.J.A.C. 14:29-6.2 provides for restrictions of motor fuel sales for passenger automobiles. Motor fuel may be sold for a vehicle with an odd numbered license plate only on odd-numbered days of the month, and vice versa. Existing provisions excluding certain license plate numerals, and excluding the 31st day of the month from regulation under the section, are proposed for deletion. Further, a proposed amendment would apply the scheme to vehicles from other jurisdictions, where the existing rules applied the rules of the other jurisdiction to those vehicles. These proposed changes will simplify the scheme and make it fairer and easier to apply.

14:29-6.3 Quantity of motor fuel

Minor amendments that do not affect meaning are proposed to N.J.A.C. 14:29-6.3, which authorizes the setting of minimum or maximum amounts of motor fuel that may be sold during an energy emergency.

14:29-6.4 Methods for notifying public

Minor clarifying amendments are proposed to N.J.A.C. 14:29-6.4, which requires retail dealers to indicate to the public when fuel is available, not available, or available in limited amounts. In addition, the existing requirement that a retail dealer indicate the last vehicle that will be served prior to closing is amended to set a specific time (15 minutes before closing) that this indication must be made. Finally, N.J.A.C. 14:29-6.4(f) is proposed to be amended to require motor fuel dealers to post not only minimum fuel purchase requirements, but also to post any maximum sale requirements.

14:29-6.5 Exemptions from odd/even limits; self-implementing

N.J.A.C. 14:29-6.5 provides for self-implementing exemptions to the odd/even motor fuel restrictions. Clarifying amendments that do not change meaning are proposed, including provisions clarifying that no application or prior approval is necessary for these exemptions.

In addition, provisions exempting vehicles operated by disabled drivers are proposed for deletion in order to ensure fairness. For many disabled persons, the odd/even restrictions will not cause a problem. If the restrictions do cause problems for a disabled person, they can apply to the Board under N.J.A.C. 14:29-1.3 for an exemption based on extraordinary hardship. This proposed change is intended to ensure that only those truly in need of an exemption will be eligible for one. An exemption for van pools that have submitted an application is proposed to be relocated from this section to the section addressing exemptions by application at N.J.A.C. 14:29-6.6. Finally, an exemption is proposed to be added for Federal vehicles, and vehicles owned by the State, or a county or municipality. This is necessary since most State vehicles are driven extensively by field workers, often shared by many persons, and must often be fueled at particular stations under contract to the State. Restricting these vehicles to odd/even fueling could disrupt the work of State agencies and reduce the availability or efficiency of State services.

14:29-6.6 Exemptions from odd/even limits; by application

Existing N.J.A.C. 14:29-6.6 provides exemptions based on disability, the use of a car for work, and the general health and welfare of the public. The section is proposed to be deleted and replaced with similar but not identical provisions. The exemption for disabled persons is not included in the new provisions, as such an exemption is already provided for by application to the Division of Energy in the Board on the basis of hardship under N.J.A.C. 14:29-1.3. The exemption for those using a car for work is narrowed in the proposal to cover only those who need a car for work in the medical and health care field. Others who use a car for their work can apply for exemption on the basis of extraordinary hardship or public welfare under N.J.A.C. 14:29-1.3. The exemption for commuter van pools is relocated into this section from existing N.J.A.C. 14:29-6.5(a)5.

The existing rules at N.J.A.C. 14:29-6.6(b) provide for an exemption if necessary for the "health and welfare of the general public." This exemption is clarified and made more

specific in proposed N.J.A.C. 14:29-6.6(d)4, which provides for an exemption for a vehicle used in a manner that benefits the community, and for which compliance with the odd/even fuel restrictions will interfere with this benefit. This provides a more specific standard that is easier to apply.

Additional proposed new provisions specify that the exemption applies to the vehicle, not the person, that the exemption expires upon the end of the energy emergency, and that private vehicles owned by officials of local governments are not eligible for this type of exemption. These provisions will help ensure strict control of the exemptions, so that they will be fairly issued and used as intended.

14:29-6.7. Arrangements for emergency vehicles, truck stops

Existing N.J.A.C. 14:29-6.7 exempts retail motor fuel dealers from the odd/even motor fuel restrictions as regards any pre-existing contracts with commercial vehicles or certain emergency vehicles. In addition, the section sets forth provisions that allow truck stops that were in existence prior to March 4, 1991 to restrict sales to trucks only.

The provisions exempting emergency vehicles and commercial vehicles are proposed to be deleted, since these vehicles are already exempt from the odd/even motor fuel restrictions under N.J.A.C. 14:29-6.5(b)2 and 3, respectively.

The provisions addressing pre-existing truck stops are retained and recodified, and minor clarifying amendments are proposed. In addition, the date by which a retail dealer must have been classified as a truck stop in order to be allowed to restrict sales to trucks is updated to January 1, 2002.

14:29-6.8 Police authority to waive regulations in cases of emergency

Minor clarifying amendments that do not affect meaning are proposed to N.J.A.C. 14:29-6.8, which authorizes the police to waive the restrictions on sales of motor fuel in cases of bona fide emergency.

14:29-6.9 Sale to emergency vehicles on demand

Minor clarifying amendments that do not affect meaning are proposed to N.J.A.C. 14:29-6.9, which requires a retail dealer to sell motor fuel on demand to an authorized emergency vehicle.

14:29-6.10 Pre-emption of local law

Minor clarifying amendments that do not affect meaning are proposed to N.J.A.C. 14:29-6.10, which provides that this subchapter pre-empts local laws.

14:29-6.11 Interference with compliance

Minor clarifying amendments that do not affect meaning are proposed to N.J.A.C. 14:29-6.11, which prohibits interference with a retail dealer's compliance with the rules, and prohibits misrepresentation of a vehicle in order to evade the rules.

Existing N.J.A.C. 14:29-6.12, which authorizes the Board to modify the measures required under subchapter 6, is proposed for deletion because this is already authorized under N.J.A.C. 14:29-1.4, as part of the authority to modify any of the measures in the chapter.

14:29-6.12 Preferred customers; sale on first-come, first-served basis

Existing N.J.A.C. 14:29-6.13, which prohibits preferential treatment to certain customers by retail dealers, is proposed to be recodified at N.J.A.C. 14:29-6.12, with no amendments.

14:29-6.13 Sale of motor fuel in containers

Existing N.J.A.C. 14:29-6.14, which prohibits the sale of motor fuel in containers except for farm or commercial purposes, is proposed to be recodified at N.J.A.C. 14:29-6.13, with no amendments.

SUBCHAPTER 7. SUPPLIER OF PETROLEUM PRODUCTS

Subchapter 7, which sets forth reporting requirements for suppliers of petroleum products, is proposed to be repealed. The substance of the subchapter is proposed to be relocated at N.J.A.C. 14:29-5.3, in order to consolidate the reporting requirements for prime suppliers in one section.

Social Impact

The amendments proposed herein will have a substantial beneficial social impact. The amendments are intended to meet three main objectives: to increase the Board's authority to impose stringent energy restrictions in times of energy emergency, to authorize the Board President to act quickly in an emergency without having to convene the entire Board, and to clarify and simplify the rules to make them easier to understand and thus to improve compliance. While these rules authorize the imposition of significant burdens on citizens, they meet an even more significant need for control and conservation of the energy supply in times of energy shortage.

Economic Impact

These proposed amendments have the potential to have a significant economic impact. However, the economic impact of the amendments will vary greatly, because the rules provide a range of measures that can be implemented in varying degrees as necessitated by the severity of a particular energy emergency.

Potentially, economic impacts would be felt by some persons who would no longer be exempt from end-use energy reduction measures under the proposed amendments to N.J.A.C. 14:29-2.5. These persons will likely incur expenses in complying with the more stringent of the energy use reduction requirements, if those requirements are implemented.

Some of the energy end-use measures, such as the "dialing down" of thermostats, will save money for some persons or companies. However, other measures, such as rescheduling workers or reducing hours of operation, may result in higher costs. The Board will likely incur additional expenses in processing exemption applications from these formerly exempted entities. Those proposed to be removed from exempt status under N.J.A.C. 14:29-2.5 include portions of the transportation and utility industries, communications companies, prisons, and national defense activities.

The increase in the required "set aside" of regulated petroleum products from three percent to five percent under N.J.A.C. 14:29-5.1 will likely have an economic impact on prime suppliers of regulated petroleum products. However, this increase is necessary to ensure that the State will have the resources necessary to respond adequately during an energy emergency, and the Board has the authority under the rules to reduce the amount required if necessary to alleviate economic impacts. Further, the economic impact of the percentage increase will be offset to some degree by the proposed new provision allowing prime suppliers to release all unused portion of their set aside on the 27th day of each month.

The proposed amendments to narrow the exemptions by application from odd/even motor fuel restrictions at N.J.A.C. 14:29-6.6 regarding vehicles used for employment will likely have some economic impact. The existing rules provide for exemption of any vehicle necessary for employment, while the proposed provision would exempt only vehicles used for employment in the medical or health care field. This is likely to have some economic impact on some people who use a car for their work. However, a person in this situation can apply to the Board under N.J.A.C. 14:29-1.3 for an exemption if they find that compliance with the odd/even motor fuel restrictions result in hardship.

It should be noted that, even if these rules have a substantial economic impact, the rules will help to prevent hoarding and other economically damaging consequences of an energy shortage. Thus, if these rules were not implemented in a time of energy shortage, the economy could be damaged significantly, and the impact on employment could be much worse than the impact caused by the rules.

Federal Standards Statement

Executive Order No. 27(1994) and P.L. 1995, c.65 (N.J.S.A. 52:14B-22 through 24) require State agencies, which adopt State rules that exceed any Federal requirements, to include in the rulemaking document a comparison with Federal law. While comparable Federal law is found at 42 U.S.C. §8511 et seq., the proposed amendments to N.J.A.C. 14:29 do not contain standards or requirements that exceed those Federal requirements. The Federal law requires the President to set Federal and State energy conservation targets in times of energy emergency. The State is then required to submit an energy conservation plan describing how the targets will be met. The Federal law also encourages the States to submit energy conservation plans in advance, in order to be prepared in the event of an energy emergency. The rules being amended herein are such a plan.

Jobs Impact

The Board anticipates that the proposed amendments could have an impact on employment, because the amendments would reduce somewhat the availability of exemptions. However, the degree of impact will depend on the particular measures implemented, which in turn will depend on the severity of the energy shortage underlying the energy emergency.

Agriculture Industry Impact

The Board anticipates that the proposed amendments will have no impact on the agriculture industry. The existing rules contain exemptions for farmers and farm vehicles from odd/even motor fuel restrictions and from prohibitions on sale of fuel in containers, and the proposed amendments do not affect these exemptions. See N.J.A.C. 14:29-6.5(b)2 and N.J.A.C. 14:29-6.13(a).

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board has determined that the amendments proposed herein will impose some additional reporting, recordkeeping or other compliance requirements on any small businesses. A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 employees.

The proposed increase in the required petroleum set aside will not affect small businesses, because the set aside is required only of prime suppliers, none of which are small businesses. The amendments that would narrow the exemptions from end-use energy reduction requirements, and the exemptions from odd/even motor fuel restrictions, are both likely to affect some small businesses, in that some of the entities that will no longer be

exempt are likely to be small businesses. However, the option of applying to the Board on the basis of hardship or public welfare under proposed N.J.A.C. 14:29-1.3 will ameliorate this impact. Because of this option, and the fact that these rules are of critical importance in managing a potential energy emergency, no special provisions are proposed for small businesses.

Smart Growth Impact

The Board anticipates that the proposed amendments will have no impact on either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan. The State Plan is intended to "provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions" and to "identify areas for growth, agriculture, open space conservation and other appropriate designations." N.J.S.A. 52:18A-199a. Smart growth is based on the concepts of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile traffic and dependency, stabilizing property taxes, and providing affordable housing." While an energy shortage may affect the location of future development, the proposed amendments themselves do not, and therefore will not impact smart growth or the State Plan.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

14:29-1.1 Scope

(a) The [following rules, with the exception of N.J.A.C. 14:29-2.2, shall be implemented] Board of Public Utilities shall implement this chapter when the Governor, by Executive Order, has proclaimed a state of energy emergency under N.J.S.A. 52:27F-17 , except that the Board may implement N.J.A.C. 14:29-2.2 (public appeal), N.J.A.C. 14:29-5.3(a) (designated representative), and N.J.A.C. 14:29-4.1(b) (load interruption plan) prior to a Governor's declaration of an energy emergency .

(b) The Governor's declaration of [an] a state of energy emergency shall be based upon a finding by the Board that there impends or exists [a serious shortage of energy which poses a grave threat to] an energy supply shortage of a dimension which endangers the public health, safety or welfare in all or any part of the State.

(c) In making [such] a finding under this section, the Board shall [set forth] state whether the [emergency shall be] shortage is limited to a specific energy form or to any specific area of the State [in which such a shortage exists or impends].

14:29-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

["Alternate fuel capabilities" means a situation where an alternate fuel could have been utilized whether or not the facilities for such use have actually been installed; provided, however, that when the use of natural gas is for plant protection, feedstock, or process uses, and the only alternate fuel is propane or other gaseous fuel, then the consumer will be treated as if he had no alternate fuel capability.

"Ambulatory handicap" means any physical condition which significantly impairs mobility requiring confinement to a wheelchair; or other disability where compliance with the provisions of this chapter would have the likelihood of seriously impairing or harming the health of the person.]

"Authorized emergency vehicles" means vehicles of fire departments, utilities, police vehicles, ambulances, and such other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety pursuant to [the provisions of Title 39 of the Revised Statutes] N.J.S.A. 39.

...

"Boiler fuel" means natural gas or petroleum product(s) used as a fuel for the generation of steam or electricity [, including the utilization of] . This term includes natural gas or petroleum product(s) used in gas turbines for the generation of electricity.

"BTUH" means British thermal units per hour, and pertains to the volume of natural gas.

...

"Commercial vehicle" means a motor [vehicles not designed for the transportation of passengers and motor vehicles, or designed but not used for the transportation of passengers,] vehicle used for commercial purposes on the highways, such as for the transportation of goods, which either [bear] bears commercial plates or bears the name and address of the owner of the vehicle affixed to the exterior of the vehicle in the manner prescribed for commercial vehicles in [chapter 4 of Title 39 of the Revised Statutes] N.J.S.A. 39:4. This term includes motor vehicles designed but not used for the transportation of passengers, and also includes motor vehicles that are not designed for the transportation of passengers.

["Covered product" means any petroleum product subject to the State Set-Aside.]

"Electric utility" means a public utility, as that term is defined in N.J.S.A. 48:2-13, that transmits and distributes electricity to end - users within the State of New Jersey.

"End-user" means any person who is [an ultimate] a retail consumer of energy.

...

["Heat recovery system" means a system which uses previously wasted heat for useful purposes such as space heating, process heating, and so forth. It may involve the use of heat rejected from motors, processes, or other heat generating equipment which would otherwise be wasted or lost by being vented to the atmosphere or unrecaptured.]

...

"Interruptible" means a classification of energy service from schedules or contracts under which seller is not expressly obligated to deliver specific energy units within a given time period, and which anticipates and permits interruption on short notice, or service under schedules or contracts which expressly or impliedly require installation of equipment to allow use of an alternative fuel [capability].

"Mcf/d" means thousand cubic feet per day, and pertains to the volume of natural gas.

...

"Motor vehicle" means any vehicle propelled by a petroleum product, electricity or natural gas [other than by muscular power], excepting such vehicles as run only upon rails or tracks.

["Omnibus" means buses, taxicabs and all other motor vehicles used for the transportation of passengers for hire, except school buses if the same are not otherwise used in the transportation of passengers for hire.]

"Omnibus" means a motor vehicle used for the transportation of passengers for hire, including transit buses, taxicabs, and livery car services. This term does not include a commuter van or vehicle used in ridesharing arrangements, or a school bus, unless the van, vehicle or school bus is otherwise used in the transportation of passengers for hire.

["Operating reserve" means electric generating capability and/or equivalent generation in excess of forecast system peak load which must be available within 30 minutes or less to provide for load variations and forecasting errors, frequency regulation, area protection and equipment failure or malfunction.]

...

["Plant protection gas" means minimum volumes required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material in process as would otherwise be destroyed, but shall not include deliveries required to maintain plant production. For the purpose of this definition propane and other gaseous fuels shall not be considered alternate fuels.]

"President of the Board" means the President of the New Jersey Board of Public Utilities.

...

["Process gas" means gas use for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics. For the purpose of this definition propane and other gaseous fuels shall not be considered alternate fuels.]

...

"Regulated petroleum product" means any of the following: motor fuel, as defined herein; aviation gasoline; jet fuel; kerosene; diesel fuel; number 1 distillate fuel; number 2 fuel oil; number 4 fuel oil; residual fuel oil; and propane.

...

"School bus" means [any] a motor vehicle used for the transportation of children to or from school for secular or religious education, operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for compensation [for the transportation of children to or from school for secular or religious education] ; which complies with the regulations of the Department of Education affecting school buses.

["Spinning reserve" means that portion of primary reserve synchronized to the system and under unrestricted control of the turbine governor.]

["Supplier of motor fuel" means any refiner, importer, marketer, jobber, distributor, terminal operator, firm, corporation, wholesaler, broker, cooperative or other person who supplies,

sells, consigns, transfers or otherwise furnishes motor fuel to a retail dealer.]

"Truck" means a commercial vehicle, as defined herein, which is designed, used, or maintained primarily for the transportation of goods. This term does not include sport utility vehicles (SUVs).

"Truck stop" means any retail dealer who provides service predominantly to trucks and truck tractors, as these terms are defined in [chapter 1 of Title 39 of the Revised Statutes] N.J.S.A. 39:1-1.

["Wholesale purchaser-consumer" means any person that is an ultimate consumer who, as part of its normal business practices, purchases or obtains a covered product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which purchased or obtained more than 50,000 gallons of that covered product in the completed calendar year prior to the declaration of the emergency.]

["Wholesale purchaser-reseller" means any person who purchases, receives through transfer, or otherwise obtains (as by consignment) a covered product and resells or otherwise transfers it to other purchasers without substantially changing its form. They are designated in the trade as distributors, jobbers, resellers, retailers or service station operators.]

14:29-1.3 Exemptions

[(a) Any person who is aggrieved by the implementation of any provisions of this chapter may apply for and shall be granted a review of whether compliance places an unreasonable burden upon that person in light of the prevailing conditions of emergency.

(b) Such application shall contain, as a minimum, the name, address and telephone number of the aggrieved party and a concise statement of the grievance.]

(a) A person may apply to the Division of Energy in the Board of Public Utilities, or its successor, for an exemption from one or more of the requirements of this chapter on the basis of extraordinary hardship or public welfare.

(b) The exemptions in this section do not apply to the odd/even motor fuel purchase restrictions at N.J.A.C. 14:6, except if an exemption from those restrictions has been applied for under N.J.A.C. 14:29-6 and denied. Procedures for applying for an exemption covering odd/even motor fuel restrictions can be found at N.J.A.C. 14:29-6.

(c) To obtain an exemption based on extraordinary hardship, a person shall submit documentation demonstrating that:

1. Compliance with the requirement for which exemption is requested would subject

- the person to an unreasonable burden that is disproportionately heavier than the burden placed on others who must comply with this chapter; and
2. The disproportionate burden placed on the person is not caused directly or indirectly by the person's action or omission.

(d) To obtain an exemption based on public welfare, a person shall submit documentation demonstrating that compliance with the requirement from which exemption is requested would result in denial of a public benefit to the community, and/or to the citizens of New Jersey.

(e) An application under this section shall contain, at a minimum:

1. The name, mailing address, e-mail address (if available) and telephone number of the applicant;
2. A citation to the requirement of this chapter from which an exemption is requested; and
3. A description of the activity that violates this chapter; and
4. The documentation required at (c) or (d) above, as applicable.

(f) An application under this section shall be submitted by mail to the Division of Energy in the Board of Public Utilities, at the address in N.J.A.C. 14:29-7.2.

14:29-1.4 [Reservation] Modification of this chapter during emergency

The Board [reserves the right to] may modify any of the [various emergency] measures set out in this chapter [and to] , and/or may implement said measures in whole or in part , as necessary to address the energy emergency.

14:29-1.5 Delegation to Board President

In cases where a Board action or decision is urgently needed and a quorum cannot be convened in a timely manner, or as authorized by statute or executive order, the President may exercise any Board authority under this chapter. Any decision or action taken by the President of the Board under this section shall have the same legal authority as if taken by the entire Board.

14:29-1.6 Website

The New Jersey Board of Public Utilities maintains a website at www.bpu.state.nj.us. If the Governor declares an energy emergency, information pertaining to the energy emergency will be posted on the website from time to time to assist the public.

SUBCHAPTER 2. END-USE ENERGY REDUCTION

14:29-2.1 Scope

[The provisions of this] This subchapter shall apply to all energy end-users in New Jersey, and to any person, as defined at N.J.A.C. 14:29-1.2, that provides an energy product for sale within the State of New Jersey.

14:29-2.2 Public appeal

In the event of an impending [supply] shortage of energy supplies, the Board may make public appeals or require electric and gas utilities and suppliers of regulated petroleum products to make public appeals through appropriate news media , requesting end-users to reduce their use of electricity, natural gas, and regulated petroleum products.

14:29-2.3 Energy reduction measures

(a) Upon the Governor's declaration of an energy emergency, the Board may require energy end-users to implement in whole or in part various energy reduction measures or limitations of energy uses and reductions of hours of operation described in this [subsection] section.

(b) The measures in this section are not listed in priority order. The Board shall implement these measures in the order most likely to effectively address the energy emergency.

[1.] (c) Measures for all energy users are as follows:

1. [i.] Heating energy sources shall not be used to maintain [all] temperatures within public buildings of State, county, local governments and school boards, including educational institutions, [all] industrial and commercial establishments, at warmer than 65 degrees Fahrenheit during business hours, including start-up and preparation time, and not [more] warmer than 55 degrees Fahrenheit during non-business hours. This provision covers all public buildings of State, county, and local governments, including school boards and educational institutions; and covers all industrial and commercial establishments.
2. [ii.] Where separate thermostats for heating and cooling are in use, air conditioning thermostats shall be at 80 degrees Fahrenheit or at some other level such that cooling energy is not used to achieve prescribed heating levels.
3. [iii.] Temperatures within all single and multiple family dwellings shall be set at 65 degrees Fahrenheit from 6:00 A.M. to 11:00 P.M. and 60 degrees Fahrenheit from 11:00 P.M. to 6:00 A.M.
4. [iv.] Portable space heaters [and threshold heaters] shall not be used as supplementary heating sources [shall be prohibited].
5. [v.] Where applicable, window draperies and blinds shall be used to cut down heat losses by setting them to the closed position during the nighttime hours

and on cold, cloudy days, and setting them to the open position during periods of sunshine.

6. [vi.] Thermostat control devices for hot water shall be set to maintain a maximum temperature of no more than 110 degrees Fahrenheit.
7. [vii.] Steps shall be taken to eliminate heating in all unused and seldom used areas, such as stairwells, where economically feasible.
8. [viii.] Work schedules for building cleaning, maintenance, restocking, and so forth, shall be revised as necessary to minimize [which would require] the necessity for offices or industrial facilities to be open beyond normal working hours [, shall be minimized].
9. [ix. Nighttime] Professional sports, entertainment and recreational activities shall be [curtailed] suspended or rescheduled as directed by the Board.
10. [x.] All public museums, art galleries and historic buildings shall be closed.
11. [xi.] Retail establishments shall be closed on Sunday except for those providing essential services to the public , such as retail suppliers of food and energy.
12. [xii.] Retail establishments shall be closed from 7:00 P.M. to 9:00 A.M. each day, except those providing essential services to the public , such as retail suppliers of food and energy.
13. [xiii.] Swimming pool water [heating is prohibited] shall not be heated.
14. [xiv.] All nonessential energy uses shall be [prohibited] discontinued.

(d) [2.] Measures for electricity users are as follows:

1. [i.] All outdoor flood and advertising lighting shall be eliminated, except for the minimum level to protect life and property and, where feasible, a single illuminated sign identifying commercial facilities that are open after dark.
2. [ii.] General lighting levels in stores and offices shall be reduced as close to minimum safety levels as possible.
3. [iii.] Show window and display lighting shall be eliminated.
4. [iv.] The number of elevators operating in office buildings during non-peak hours shall be reduced by at least 50 percent.
5. [v.] All aesthetic, ornamental lights shall be extinguished.

(e) [3.] Measures for natural gas users are as follows:

1. [i.] All aesthetic, ornamental gas lights shall be extinguished.
2. [ii.] All exterior gas lighting, except for essential safety and security purposes, shall be eliminated.

14:29-2.4 Hour limitations

In the event that [the provisions of N.J.A.C. 14:29-2.2 and 2.3] measures taken under this subchapter fail to provide adequate relief, the Board may impose further [hour] restrictions upon the hours of operation of industrial and commercial operations.

14:29-2.5 Exemptions from end-use energy reduction measures

(a) [Notwithstanding the provisions of N.J.A.C. 14:29-2.2 and 2.3, the Board hereby exempts the following from all or a portion of] The following shall be exempt from the [above] requirements of N.J.A.C. 14:29-2.3 and 2.4, so long as [steps have been taken] the person or facility exempted has taken reasonable steps to reduce all non-essential energy use [or unless so directed by order of the] . However, this exemption may be modified or suspended by the Board :

- [1. Railroads;
- 2. Local and suburban transit;
- 3. Interstate transportation by air;
- 4. Pipeline transportation;
- 5. Communications (telephone, radio, television and cable television);
- 6. Electric, gas and sanitary services;
- 7. Petroleum refining;]
- [8.] 1. Hospitals and other facilities licensed to provide medical care; and
- [9. Electric sales for resale under FERC jurisdiction;
- 10. Prisons;
- 11. Police and fire-fighting facilities;
- 12. Water supply;
- 13. Federal activities essential to national defense; and]
- [14. Life] 2. Persons who depend on life support systems [: Consideration should be given to advance notification of customers with life support systems such as iron lungs, shaker beds, and kidney machines].

SUBCHAPTER 3. NATURAL GAS

14:29-3.1 Scope , interruptible customers

[The provisions of this] (a) This subchapter shall apply to all natural gas utilities that provide distribution or commodity natural gas service within the State of New Jersey.

(b) During an energy emergency that was declared based on the shortage of a regulated petroleum product, a natural gas utility shall not reduce or discontinue supply to interruptible customers for economic reasons, if the reduction or discontinuation would cause the customer to increase its use of a regulated petroleum product. This provision shall not apply in the case of a coincident natural gas and petroleum shortage.

14:29-3.2 Priority plan for [involuntary] mandatory curtailment

(a) In the event that measures taken under N.J.A.C. 14:29-2.2, 2.3 and 2.4 do not provide sufficient relief [the following sequence of involuntary curtailment shall be implemented] to achieve a balance between the supply of and demand for natural gas, the Board shall require the implementation of the following mandatory steps, which shall be implemented in

the order listed, except in accordance with (b) below or N.J.A.C. 14:29-1.4:

1. Reduce gas service to a minimum at gas company facilities;
2. [Curtail] Suspend all interruptible natural gas service, as defined at N.J.A.C. 14:29-1.2; [other than for plant protection, process, or feedstock usage;
3. Curtail all interruptible gas service for plant protection, process, or feedstock usage;]
3. [4. Curtail] Suspend all firm industrial service of 50 Mcfd (2 million BTUH) or more. [, other than for plant protection, process or feedstock usage] Use of process and/or feedstock gas shall be discontinued as soon as possible without damaging equipment or facilities ;
4. [5. Curtail] Suspend all firm commercial [boiler] service of 50 Mcfd (2 million BTUH) or more . Close all business and reduce heat to the minimum necessary to protect any buildings, or 40° F, whichever is lower;
5. [6. Curtail] Suspend all firm industrial [service for] process and feedstock use. Firm industrial customers [of] with over 50 Mcfd [or more and large commercial] service [of 50 Mcfd or more] shall cease operating;
6. [7. Curtail] Suspend all firm industrial service of 50 Mcfd or less. Firm industrial customers with service of 50 Mcfd or less shall cease operating and shall reduce heat to the minimum necessary to protect any buildings, or to 40°F, whichever is lower;
7. [8. Curtail] Suspend all firm [industrial plant protection] commercial service of 50 Mcfd or less. Firm commercial customers with service of 50 Mcfd or less shall cease operating and shall reduce heat to the minimum necessary to protect any buildings, or to 40°F, whichever is lower;
8. [9. Curtail] Suspend all [small commercial service (50 Mcfd or less)] gas service to industrial customers, including natural gas necessary to protect buildings.

(b) Consecutive [categories] steps in the list above may be [curtailed] taken simultaneously if necessary to provide sufficient relief in a timely manner. However, higher [priorities will not be curtailed] priority steps will be implemented prior to [the curtailment of lower priorities] lower priority steps, except in accordance with N.J.A.C. 14:29-1.4.

14:29-3.3 Inter-gas utility allocations

Pursuant to [the provisions of section 15(b)(3), P.L. 1977, c.146] N.J.S.A. 52:27F-15(b)(3), the Board may order the allocation of specific quantities of natural gas from one gas utility to another to prevent the curtailment of service to residential end-users.

14:29-3.4 Residential curtailment

(a) Where all possible means of carrying system load have been taken, including those measures set forth in N.J.A.C. 14:29-2.2, 2.3, 2.4 and 3.2, and the natural gas supplier determines that load reduction is still required in order to ensure that demand does not exceed supply, a gas utility shall [curtail residential end-users.] take one of the actions at (b)

or (c) below, as applicable.

[1. The] (b) If a natural gas supplier determines under (a) above that load reduction is required, the gas utility shall notify the Board as soon as is reasonably feasible and [seek] request from the Board the authority to [implement sectional curtailment of] reduce or eliminate the supply of natural gas to residential end-users pursuant to [section 15(b)(3), P.L. 1977, c.146.] N.J.S.A. 52:27F-15(b)(3).

[2. In the event operating conditions are of such a critical nature that] (c) If a system emergency is imminent and [the implementation of N.J.A.C. 14:29-2.2, 2.3 and 2.4 or] the notification procedure [pursuant to (a)1] set forth in (b) above will cause a delay that could unduly jeopardize the integrity and proper operation of the system, the gas utility may [implement N.J.A.C. 14A:2-3.2, including the curtailment of] reduce or discontinue service to residential end-users without prior approval from the Board. [Under such conditions, the provisions of (a)1 above and N.J.A.C. 14:29-2.2, 2.3 and 2.4 are deemed waived.]

(c) If a gas utility acts without prior approval from the Board in accordance with (c) above, the utility shall notify the Board as soon as possible, and in no case any later than four hours after beginning the reduction or elimination of service to residential end-users.

(d) A gas utility that reduces or eliminates service to residential end-users under this section shall make every effort to notify affected non-interruptible customers at least two hours prior to the service reduction or elimination.

SUBCHAPTER 4. ELECTRIC

14:29-4.1 Scope , load interruption plan

(a) [The provisions of this] This subchapter shall apply to all electric utilities that supply or distribute electricity within the State of New Jersey.

(b) Each electric utility shall file with the Board a load interruption plan, which details how the utility will implement rotating load interruptions if necessary. The plan shall be updated annually, by March 1st of each year.

14:29-4.2 Programs to reduce energy consumption

(a) [In the event that those] If the PJM independent system operator (ISO) determines that the measures set forth in N.J.A.C. 14:29-2.2, 2.3 and 2.4 [do not provide sufficient relief, and after consideration of] , combined with any simultaneous or anticipated relief actions by the [regional] PJM independent system operator (ISO) and the New York ISO, do not provide sufficient relief from energy emergency conditions, the electric utilities may take the following actions [shall be instituted]:

1. Departures from normal operating procedures, which have an acceptable impact on reliability and economy [, shall be made]. These include, but are not limited to, the following:
 - i. (No change.)
 - ii. A five percent voltage reduction [is to be made effective on a continuous basis]; and
 - iii. (No change.)
2. [Loads are to be interrupted on a rotating basis every two hours, as determined by each electric utility, through a plan filed with the Board and updated every March 1st. Where such interruptions would cause severe hardship on particular customer operations or would have an unacceptable impact on continuous operations, the customer may request, of the utility, an exemption from this requirement.] Load interruptions, implemented in accordance with a plan filed by each electric utility with the Board in accordance with N.J.A.C. 14:29-4.1(b).

[14:29-4.3 Implementation]

(b) [The electric utilities] If an electric utility implements the measures set forth at (a) above, the utility shall inform the Board of the implementation as soon as reasonably feasible and, if possible, prior to implementation of these measures [N.J.A.C. 14:29-4.2].

(e) The Board may require the electric utilities to take any of the measures at (a) above if necessary to address conditions caused by the energy emergency.

SUBCHAPTER 5. PETROLEUM PRODUCTS

14:29-5.1 Required set aside of regulated petroleum products

(a) During an energy emergency, each prime supplier of a regulated petroleum product shall maintain a store of each regulated petroleum product that it supplies. This stored product shall be known as a "set aside," and the amount of each supplier's set aside for each regulated petroleum product shall be determined in accordance with this section.

(b) The amount of each prime supplier's set aside for a particular regulated petroleum product for a particular upcoming month shall be 5% of the amount of that product sold in New Jersey by that prime supplier during the same month of the previous year, as reported to the U.S. Department of Energy's Energy Information Agency on form EIA-782C, Monthly Report of Prime Supplier Petroleum Product Sold for Consumption.

(c) Seven business days before the start of each month, each prime supplier shall notify the Board of the quantity of its set aside for the upcoming month for each regulated petroleum product handled by the supplier.

(d) If any portion of a set aside has not been used by the close of business on the 27th day of the month, the prime supplier may release this unused portion.

(e) The Board may increase or decrease the amount or percentage of the required set aside as necessary to address an energy emergency. The Board shall notify all prime suppliers at least two days before the adjusted set aside requirement takes effect.

[14:29-5.1 Scope and purpose] 14:29-5.2 Redirection of petroleum set aside

[Upon declaration of] At any time during an energy emergency, [in order] the Board may, if necessary to facilitate relief of any hardship and meet the [emergency requirements of wholesale purchaser-consumers and end users, the Board may, as necessary,] demand for regulated petroleum products, require one or more prime suppliers to redirect [up to three percent of available supplies to alleviate shortages for the following products: gasoline; aviation gasoline; kerosene; diesel fuel; distillate fuel; number 4 fuel oil; residual fuel oil; and propane] some or all of their set aside for one or more regulated petroleum products to a specified end-user .

[14:29-5.2 Responsibilities of prime] 14:29-5.3 Prime suppliers – reporting, non-discrimination

(a) Each prime supplier, as defined at N.J.A.C. 14:29-1.2, shall continuously maintain and designate a representative to act on behalf of the prime supplier with respect to available supplies. Each prime supplier shall notify the Board in writing of such designation , and shall include the name, office telephone number, e-mail address, fax number and cell phone (if available) of the representative. The prime supplier shall resubmit this information annually on March 1st of each year. In the event of a redesignation, the prime supplier shall notify the Board of such redesignation within one day of its occurrence.

(b) The representative identified under (a) above shall provide [information] daily updates to the Board [identifying available supplies on a daily basis] during a declared energy emergency. The updates shall provide information regarding available and anticipated supplies of the regulated petroleum products handled by the supplier.

(c) Each prime supplier shall submit to the Board the New Jersey posted dealer tank wagon price, posted reseller tank car price, or other posted price for each regulated petroleum product for each class of customer within 24 hours after a price change. Submittals postmarked within 24 hours after a price change shall be deemed to be in compliance with this subsection.

(d) The information required under this section shall be sent to:

Energy Emergency Coordinator
Division of Energy

New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

(e) Each prime supplier shall distribute regulated petroleum products fairly without discrimination between wholly owned affiliates and non wholly owned affiliates.

(f) During an energy emergency, a prime supplier shall not make any change in its distribution of regulated petroleum products without prior approval by the Board.

N.J.A.C. 14:29-5.4 Interruptible dual-fuel (natural gas and petroleum) customers

In accordance with N.J.A.C. 14:29-3.1(b), during an energy emergency that was declared based on the shortage of a regulated petroleum product, a natural gas utility shall not reduce or discontinue supply to interruptible customers for economic reasons, if the reduction or discontinuation would cause the customer to increase its use of a regulated petroleum product. This provision shall not apply in the case of a coincident natural gas and petroleum shortage.

SUBCHAPTER 6. REGULATION AND CONTROL OF SALE OF MOTOR FUEL

14:29-6.1 Scope

[In the event that] If, during an energy emergency, the Board determines that there is a significant shortage of motor fuel, this subchapter shall apply to [the sale of all] all sales of motor fuel made by retail dealers to operators of motor vehicles. The terms "sales," "motor fuel," "retail dealer," and "motor vehicle" are defined at N.J.A.C. 14:29-1.2.

14:29-6.2 Days of access to retail dealers--odd/even measure

(a) [No] Upon a determination of motor fuel shortage by the Board in accordance with N.J.A.C. 14:29-6.1, no retail dealer shall sell any motor fuel for use in a service tank in a passenger automobile , as defined at N.J.A.C. 14:29-1.2, except as set forth in the following schedule:

1. Operators of passenger automobiles bearing license plates the last number of which is an even number shall be permitted to purchase motor fuel for use in the service tank of said passenger automobile on even numbered days of each month[.] ;
2. Operators of passenger automobiles bearing license plates the last number of which is an odd number or containing no number shall be permitted to purchase motor fuel for use in the service tank of said passenger automobile on odd numbered days of each month[.] ; and
3. Operators of passenger automobiles bearing license plates from any other state or foreign nation shall be permitted to purchase motor fuel on the same odd/even

- basis [as any regulation in effect in their state.] described at (a)1 and 2 above.
- [4. For the purpose of determining the last number of the license plate, any number preceded by a hyphen or dash shall not be used in determining the right to purchase motor fuel described in this section.
 5. The provisions of this section shall not be applicable on the 31st day of any month.
]

14:29-6.3 Quantity of motor fuel

[The] Upon a determination by the Board in accordance with N.J.A.C. 14:29-6.1, the Board may establish minimum or maximum quantities of motor fuel to be sold to any purchaser , including limitations on the number of gallons to be sold and/or limitations on the number of dollars worth of motor fuel to be sold.

14:29-6.4 Methods for notifying public

(a) Every retail dealer of motor fuel shall conspicuously display a flag, so that it is easily visible to the public, during such time that his or her place of business is open, as follows:

1. (No change.)
2. A green flag shall be displayed when all grades of motor fuel are available for sale to members of the general public without limitations in regard to the maximum amount which may be purchased; and
3. (No change.)

(b) Whenever a retail dealer displays a yellow flag, he or she shall post in a conspicuous place and manner the limitations applicable to sales of motor fuel.

(c) Every retail dealer of motor fuel shall post in a conspicuous place and manner the hours during which he [shall be selling] or she will sell motor fuel to members of the general public.

(d) (No change.)

(e) Every retail dealer shall , at least 15 minutes prior to closing, prominently indicate the last motor vehicle eligible to receive motor fuel from the retail dealer prior to closing.

(f) If a minimum or maximum purchase or minimum or maximum sale requirement is in effect, every retail dealer of motor fuel shall post in a conspicuous place and manner the requirement which is in effect at that time.

14:29-6.5 Exemptions from odd/even limits; self-implementing

(a) This section provides for self-implementing exemptions for certain vehicles from the odd/even restrictions on sales of motor fuel at N.J.A.C. 14:29-6.2. The exemptions

provided for in this section are self-implementing and shall not require an application or prior approval.

[(a)] (b) The following [persons] vehicles shall be exempt from the odd/even motor fuel restrictions at N.J.A.C. 14:29-6.2 [, Days of access to retail dealers--odd/even measure]:

1. [Operators of motor] Motor vehicles bearing license plates with "MD" identification marks [in which] , provided that a physician is riding in the vehicle on medical business at the time of the motor fuel purchase;
2. [Operators of commercial] Commercial vehicles, farm vehicles, omnibuses, and school buses , as those terms are defined at N.J.A.C. 14:29-1.2;
3. [Operators of authorized] Authorized emergency vehicles , as defined at N.J.A.C. 14:29-1.2, whether or not the motor fuel is purchased under a contract ; and
- [4. Operators of motor vehicles bearing license plates or handicap parking sticker which identify the operator as a disabled or handicapped driver;
5. Operators of motor vehicles which are being used as van pools recognized by the New Jersey Department of Transportation bearing a sticker issued by the Board. Operators of motor vehicles which are being used as van pools may apply to the Board for such an exemption sticker. The Board may require operators of van pools to furnish such proof as the Board may prescribe in order to establish a right to such an exemption; and
6. Operators of motor vehicles with weekday exemption stickers shall only be exempt from Monday through Friday inclusive.]
4. Vehicles owned and operated by the Federal government, or by the State of New Jersey or political subdivisions thereof, such as counties and municipalities.

14:29-6.6 Exemptions [on] from odd/even limits; by application

[(a)] In the absence of identifying license plates, persons who can establish to the satisfaction of the Board that they suffer from an ambulatory handicap or disability, and require the use of a passenger automobile for business, in connection with their employment or to obtain medical care or the necessities of life, shall be issued a sticker in the form prescribed by the Board, which when affixed to said automobile in the manner prescribed, shall exempt such persons from the provisions of N.J.A.C. 14:29-6.2. Such persons shall be required to furnish such proof as may be required by the Board in the form and manner as the Board may prescribe in order to establish such right to exemption.

(b)Any person who can demonstrate to the satisfaction of the Board that an exemption is necessary for the health and welfare of the general public may receive an exemption sticker.

(c) An operator of a motor vehicle, who can demonstrate to the satisfaction of the Board that an exemption is necessary for employment, may receive a weekday exemption sticker.

1. The Board will consider an exemption necessary for an individual's employment when the individual demonstrates that:

- i. A motor vehicle is required in pursuing his or her employment;
- ii. The motor vehicle used for pursuit of his or her employment is supplied with motor fuel exclusively from a retail dealer;
- iii. Alternative means of transportation to pursue his or her employment are unavailable;
- iv. The individual travels a minimum of 125 miles per day at least four days a week, exclusive of commutation to and from work; and
- v. The individual travels a minimum of 25,000 miles per year in the conduct of his or her employment.

2. To receive an exemption under this subsection, an individual shall submit a completed and notarized application on a form provided by the Board. This form shall be accompanied by a declaration of employment by the individual's employer on the stationery of the employer. Additionally, an individual may be asked to document all information submitted to the Board. The Board reserves the right to require that all applicants submit documentation in any requested form, including, but not limited to, Internal Revenue Service forms.

3. An individual in compliance with the requirements of this subsection will receive a weekday exemption.]

(a) This section provides for exemptions for certain vehicles, to be issued by the Division of Energy in the Board of Public Utilities or its successor, from the odd/even restrictions on sales of motor fuel at N.J.A.C. 14:29-6.2. An exemption issued under this section applies to the vehicle and not to its operator.

(b) Once issued, an exemption under this section is not transferable to another vehicle. All exemptions issued under this section shall expire upon the lifting of the energy emergency.

(c) Vehicles owned by employees or elected officials, who serve county and/or municipal governments, are not eligible for exemption under this section.

(d) To obtain an exemption under this section, a person shall submit an application to the Division of Energy at the address in N.J.A.C. 14:29-5.3(d), which includes documentation that one or more of the following criteria are met:

1. The exemption is necessary in order to maintain critical community services, such as meals on wheels or senior citizen transport;
2. The exemption is necessary to enable a licensed health care professional to perform their work;
3. The exemption is necessary to maintain operation of a commuter van pool that is recognized by the New Jersey Department of Transportation; or
4. Both of the following criteria are met:
 - i. The exemption will result in clear, tangible, and critical benefits to the community;
and
 - ii. Compliance with the odd/even restrictions on motor fuel will interfere with the community benefit that would otherwise result from use of the vehicle.

(d) To obtain an exemption under this section, a person shall submit a completed application to the Division of Energy in which the vehicle that is the subject of the application exemption is registered. The Division of Energy shall determine the type and amount of documentation necessary to adequately demonstrate that a vehicle meets the criteria at (d) above.

14:29-6.7 [Arrangements permitted] Truck stops

[(a) Any retail dealer who, prior to the declaration of emergency, had a bona fide agreement or written contract with a commercial account for the periodic sale of motor fuel to commercial vehicles, omnibuses, school buses, or authorized emergency vehicles shall be allowed to continue those sale practices, notwithstanding the provisions of N.J.A.C. 14:29-6.2 and 6.3.

(b) Provisions concerning special arrangements for emergency services are as follows:

1. The governing body of any New Jersey county or municipality or the senior officer of any Federal agency, the jurisdiction of which includes New Jersey or any portion thereof, which utilizes the services of a volunteer or professional fire department, police department, rescue squad, ambulance service, or the hospital administrator of any New Jersey hospital which utilizes the services of emergency medical personnel may enter into a written contract or agreement with designated retail dealer(s) to permit the sale of motor fuel at any time to such persons that provide said emergency services, notwithstanding any of the provisions of these regulations.

2. Said contracts or agreements shall designate by name those persons who provide said emergency services and shall designate by license plate number the motor vehicle used by said persons when responding to a call to provide said emergency services. Said contracts or agreements shall be submitted to the Board for approval consistent with a policy of motor fuel conservation and equitable allocation and the providing of essential emergency services.

3. Designated retail dealers shall obtain from persons purchasing motor fuel under the provisions of this subsection a signed and dated receipt declaring the motor fuel gallonage purchased. Said designated dealers shall, on a monthly basis, submit all such receipts to the appropriate governing body, senior officer or hospital administrator.

4. The governing body, senior officer, or hospital administrator or authorized representative thereof shall conspicuously post in the appropriate municipal building, county office building, agency office building or hospital the names of all persons designated in any said contracts or agreements and the motor fuel gallonage purchased on a monthly basis, if any, by each said designated person. Said governing body, senior officer or hospital administrator shall retain a record of all purchases made under the provisions of this

subsection and submit same, upon demand, for review by the Board.]

(a) [(c) A] If a retail dealer [, who, prior to March 4, 1991, qualified as a truck stop, may, at the dealer's option,] has operated a truck stop, as defined at N.J.A.C. 14:29-1.2, continuously since January 1, 2002, the dealer may choose to restrict its sales of motor fuel to the operators of trucks , as defined at N.J.A.C. 14:29-1.2, and truck tractors only.

(b) If a retail dealer chooses to restrict its sales in accordance with (a) above, the dealer shall not [Said options does not include the right to sell at the dealer's discretion to the operators of preferred customer passenger automobiles to the exclusion of all other passenger automobiles, and any such dealer who elects to] sell motor fuel to any operator of a passenger automobile [after March 4, 1991] during the energy emergency. If a retail dealer sells motor fuel to an operator of a passenger automobile, the retail dealer shall be required to sell to all operators of passenger automobiles [subject to this subchapter] to the extent allowable under this chapter.

[A retail dealer electing] (c) If a retail dealer chooses to sell only to the operators of trucks and truck tractors under [the terms of] this section , the dealer shall post this restriction in a conspicuous place [such restriction].

14:29-6.8 Police authority to waive regulations in cases of emergency

(a) Notwithstanding any of the provisions of this subchapter, police departments of the Division of State Police in the Department of Law and Public Safety and police departments of any New Jersey municipality may, in cases of bona fide emergency, [waive any of these rules and] permit a retail dealer to sell motor fuel at any time to the operator of a motor vehicle who would otherwise not be entitled to purchase motor fuel under this subchapter.

(b) In every instance where a waiver of these rules is granted, the police department involved shall make a written record, setting forth the name of the person requesting such waiver, the name of the person granting the waiver, the waiver granted and the reasons therefor [shall be entered into the police blotter of the police department involved].

(c) For the purposes of this subchapter, a [A] bona fide emergency [exists where] shall be deemed to exist when a police officer determines that the use of a motor vehicle is necessary for the life, health or safety of an individual or community.

[(b)] (d) Any person procuring motor fuel by falsely claiming bona fide emergency shall be deemed to be in violation of this section.

[(c) A retail dealer who sells motor fuel pursuant to a waiver as described in (a) above shall not be deemed to be in violation of this subchapter.]

14:29-6.9 [Privileged] Sale to emergency vehicles on demand

[(a)] Notwithstanding any [of the provisions of this subchapter] provision of this chapter to the contrary, a retail dealer shall sell motor fuel to an operator of an authorized emergency vehicle [shall be entitled to be sold motor fuel] , as defined at N.J.A.C. 14:29-1.2, immediately upon demand [by a retail dealer] at any time including those hours when a retail dealer is not open for the sale of motor fuel to the general public.

[(b) A retail dealer who sells motor fuel in accordance with (a) above shall not be deemed to be in violation of this subchapter.]

14:29-6.10 Pre-emption of local law

All local and county regulations, statutes, ordinances and proclamations dealing with the subject matter of this subchapter are hereby superseded , to the extent that they conflict with this subchapter.

14:29-6.11 Interference with compliance

(a) (No change.)

(b) No person shall knowingly or willfully misrepresent a motor vehicle as one entitled to an exemption from this subchapter or to a priority thereunder. Such misrepresentation includes, but is not limited to, falsely identifying a motor vehicle as a commercial vehicle.

(c) If such misrepresentation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. Penalties imposed resulting from a violation of this section shall not preclude the application of any other penalties, civil or criminal, as prescribed by law.

[14:29-6.12 Modification or suspension of regulations

The Board may, from time to time and for such period as it deems appropriate, modify or suspend the operation and/or enforcement of any portion of or all of this subchapter, in whole or in part. Such modification or suspension may be made immediately effective without prior notice.]

[14:29-6.13] 14:29-6.12 Preferred customers; sale on first-come, first-served basis

(a) - (b) (No change.)

[14:29-6.14] 14:29-6.13 Sale of motor fuel in containers

(a) - (b) (No change.)

[SUBCHAPTER 7. SUPPLIER OF PETROLEUM PRODUCTS

14:29-7.1 Scope

This subchapter shall govern the periodic reporting of energy information by persons who supply petroleum products to retail dealers.

14:29-7.2 Reporting

(a) Each supplier of covered products shall submit to the Board the New Jersey posted dealer tank wagon price, posted reseller tank car price, or other posted price for each covered product for each class of customer within 24 hours of a price change.

Submissions postmarked within 24 hours of a price change shall be deemed to be in compliance with this subsection.

(b) The above information shall be sent to:

New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102
Attention: Division of Energy -- Data Section]